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09/865,403	05/25/2001	Randal J. Jolitz	13370.0003.000000	4275

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Christopher R. Benson  
Howrey Simon Arnold & White, LLP  
750 Bering Drive  
Houston, TX 77057-2198

EXAMINER

SAFAVI, MICHAEL

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 07/15/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/865,403

Applicant(s)

JOLITZ, RANDAL J.

Examiner

M. Safavi

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,5-8 and 10-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5-8 and 10-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 21, 2003 has been entered.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

3. Claims 1, 5, 6, and 14 are rejected under 35 U.S.C. 102(a) as being anticipated by Bieser et al. Bieser et al. discloses a tile formed of a composition mixture of about 36 to 64%

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polyethylene and about 36 to 64% crushed limestone, col. 8, lines 8-45, the tile being less than an inch thick and between about 3-12 inches wide and between about 6-24 inches long, col. 11, lines 50-52.

4. Claims 1 and 5 are rejected under 35 U.S.C. 102(a) as being anticipated by Yamamoto et al. Yamamoto et al. discloses a tile formed of a composition mixture of about 36 to 64% polyethylene and about 36 to 64% crushed limestone, col. 4, lines 8-17 and col. 5, lines 22-24. The tile may be manufactured to any desired form and size.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 10-13 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bieser et al. in view of the disclosure at lines 8-11 on page 1 of the instant specification.

Page 1 of the instant specification presents simulated shake and slate roofing or paneling as old and well known features within the building construction art. To have formed the Bieser et al. tile or sheeting of a simulated shake or slate appearance thus forming a tile or sheeting

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applicable to roofing or siding, would have constituted an obvious expedient to one of ordinary skill in the art at the time the invention was made as taught by the disclosure at lines 8-11 on page 1 of the instant specification.

7. Claims 6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al. in view of Bieser et al.

Arguments to each of Yamamoto et al. and Bieser et al. can be found above. To have formed the Yamamoto et al. tile of a size being less than an inch thick and between about 3-12 inches wide and between about 6-24 inches long, thus providing a tile of any specific form and size for any desired use or environment, would have constituted an obvious expedient to one of ordinary skill in the art at the time the invention was made as taught by Bieser et al.

8. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al.

Yamamoto et al. teaches utilization of various fillers including andesite, granite, clay, silica, cinders, slag, among other fillers such as limestone. To have formed the Yamamoto et al. tile with fillers of either slate or shale, thus realizing the properties afforded by utilizing slate or shale filling, would have constituted an obvious expedient to one of ordinary skill in the art at the time the invention was made.

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9. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bieser et al. in view of either Yamamoto et al. or Wells.

Yamamoto et al. teaches utilization of various fillers within the formed tile including andesite, granite, clay, silica, cinders, slag, among other fillers such as limestone. Wells teaches utilization of various fillers within the formed tile including clay, ash, talc, slate, and shale, among other fillers such as limestone. To have formed the Bieser et al. tile with fillers of either slate or shale, thus realizing the properties afforded by utilizing slate or shale filling, would have constituted an obvious expedient to one of ordinary skill in the art at the time the invention was made as taught by either Yamamoto et al. or Wells.

10. Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al. in view of the disclosure at lines 8-11 on page 1 of the instant specification.

Page 1 of the instant specification presents simulated shake and slate roofing or paneling as old and well known features within the building construction art. To have formed the Yamamoto et al. tile or sheeting of a simulated shake or slate appearance thus forming a tile or sheeting applicable to roofing or siding, would have constituted an obvious expedient to one of ordinary skill in the art at the time the invention was made as taught by the disclosure at lines 8-11 on page 1 of the instant specification.

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11. Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al. in view of Bieser et al. as applied to claims 6 and 14 above, and further in view of the disclosure at lines 8-11 on page 1 of the instant specification.

Page 1 of the instant specification presents simulated shake and slate roofing or paneling as old and well known features within the building construction art. To have formed the modified Yamamoto et al. tile or sheeting of a simulated shake or slate appearance thus forming a tile or sheeting applicable to roofing or siding, would have constituted an obvious expedient to one of ordinary skill in the art at the time the invention was made as taught by the disclosure at lines 8-11 on page 1 of the instant specification.

***Response to Arguments***

12. Applicant's arguments filed April 21, 2003, (including remarks within the Declaration of Stan Frankoski), have been fully considered but they are not persuasive. Bieser et al discloses a polyethylene composition as, for example, at lines 46-62 of col. 7.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (703) 308-2168.

M. Safavi  
July 11, 2003



MICHAEL SAFAVI  
PRIMARY EXAMINER  
ART UNIT 354